IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Oleg Shikhman et al	) Group Art Unit: 3731
SERIAL NUMBER:	10/037,899	) Before the Examiner:
FILED:	October 22, 2001	) Jessica Baxter
FOR:	CRIMPING AND CUTTING DEVICE	)

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is Interventional Therapies.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(3) STATUS OF THE CLAIMS

The application was filed on October 22, 2001 with 64 claims. Claims 15-54 and 60-64 were withdrawn from consideration pursuant to an election of species requirement dated July 25, 2003. Claims 1 and 55 were amended on June 17, 2004. The present appeal is pursuant to a final rejection of claims 1-14 and 55-59, dated September 17, 2004. A copy of the claims as amended is attached hereto at Appendix I.

(4) STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection.

(6) SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 relates to crimping and cutting device having a tip, a ferrule received in the device tip, which ferrule itself receives suture material, a hammer head configured to crimp the ferrule received in the device tip, and a generally stationary cutting edge in the device tip.

Claim 55 relates to a method of securing suture material using a crimping and cutting device, wherein after a ferrule has been crimped and suture material has been entrapped within the ferrule, abutting the hammer head against a generally stationary cutting edge within the tip, capturing the suture material therebetween and applying pressure with the hammer head against the cutting edge until the suture material is cut.

Reference is made to Figures 26-29, which shows an exemplary embodiment in accordance with the claims. The device tip is represented by 40. The hammer is 24, having a

hammer head 112. The ferrule 42 is received in the tip 40 and crimps the ferrule 42. Finally, the generally stationary cutting edge 144 effects cutting of the suture 170. A thorough description of this exemplary process appears in the Applicant's specification at page 13, line 24 to page 14, line 22.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Claims 1-3, 5-8, 10, 12-14, 55-56 and 58-59 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,643,289 to Sauer et al. (hereinafter "Sauer '289").

(B) Claims 1-10, 12 and 55-56 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,641,592 to Sauer et al. (hereinafter "Sauer '592").

(C) Claims 11 and 57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '289 in fiew of U.S. Patent No. 5,839,639 to Sauer et al. (hereinafter "Sauer '639").

(7) ARGUMENT

A. *With regard to the rejections of claims 1-3, 5-8, 10, 12-14, 55-56 and 58-59 under 35 U.S.C. 102(b) as being anticipated by Sauer '289:*

It is noted that a number of features of the claims are evidently lacking from the Sauer '289 reference. With specific regard to independent claim 1 and independent claim 55, the '289 reference fails to describe a generally stationary cutting edge. Indeed, with regard to Figures 7-9 of the '289 reference, the cutting edge of Sauer '289 extends a significant distance distally to cut the suture following crimping of the ferrule 100 by the hammer 26. (Note: the Examiner contends that because the motion is "limited in motion," it is generally stationary. By this, any object with at least some limitation on directional movement would be generally stationary (e.g., a bullet train would be generally stationary because it cannot move laterally off the tracks), and the only non-stationary particles would be free particles).

As is well known, in order to anticipate a reference, the cited reference must teach or suggest every limitation of the claims (so called "all elements rule"). Because this limitation is not taught or suggested by the '289 reference, the rejections of claims 1-3, 5-8, 10, 12-14, 55-56 and 58-59 under 35 U.S.C. 102(b) are improper.

Further with regard to independent claim 1, even if the cutting blade of Sauer '289 is "generally stationary" as the Examiner contends in the Office Action dated September 17, 2004, then the cutting edge would not be located proximally of the ferrule accepting opening, as is required by claim 1. When the blade of Sauer '289 actually cuts the suture, it is certainly more distal of the opening than proximal (the finishing stroke is into an indentation on the distal side of the opening (See Fig. 9)). Again, the rejections are improper.

With further regard to independent claim 55, the hammer head is certainly not moved proximally to crimp the ferrule. Again, with reference to Figures 7-9, the hammer 26 is moved distally against the ferrule 100. Because this limitation is lacking, the rejections of claims 55-56 and 58-59 are improper.

There is no teaching to abut the hammer head 26 of Sauer '289 (via proximal movement of the hammer 26 or otherwise) against a cutting edge (generally stationary or not) to cut suture. Because this limitation is lacking, the rejections are improper.

B. *With regard to the rejections of Claims 1-10, 12 and 55-56 under 35 U.S.C. 102(e) as being anticipated by Sauer '592:*

Sauer '592 also fails to teach every limitation of independent claims 1 and 55. Specifically, Sauer '592 fails to teach the generally stationary cutting edge within the hammer head opening. Rather, like Sauer '289, Sauer '592 teaches a movable cutting blade (thus a movable cutting edge; See Figs 16 B-E in Sauer '592). As noted above, the Examiner contends that any limitation on movement of an object renders that object "generally stationary." Above, we noted that by that argument, the Examiner might count a bullet train as being "generally stationary" because it cannot move laterally off of the tracks (the flaws in this argument are apparent). Because the '592 has somewhat more rotational motion, we

might instead say that the Examiner would contend that the tip of a baseball bat in a baseball swing is "generally stationary" because it does not travel in a linear fashion.

Because the Sauer '592 reference does not teach or suggest a generally stationary cutting edge, the rejections of claims 1-10, 12 and 55-56 under 35 U.S.C. 102(e) are improper.

C. *With regard to the rejections of claims 11 and 57 under 35 U.S.C. 103(a) as being unpatentable over Sauer '289 in view of Sauer '639:*

The Sauer '639 patent is directed to a collapsible anvil assembly for a stapler, and is presented by the Examiner merely as evidence that "safety buttons" are known as devices which may prevent premature firing of devices. The Sauer '639 patent does not otherwise add, and the Examiner does not assert that the Sauer '639 patent otherwise adds, to the teachings of the '289 patent to approximate claims 1 or 55 or to make up for the deficiencies of the '289 patent with regard to the independent claims. Accordingly, a prima facie case of obviousness is not made out for even those independent claims, much less the rejected dependent claims 11 and 57. For this reason, the rejections are improper and should be withdrawn.

(8) CLAIMS APPENDIX

1. (Once amended) A crimping and cutting device comprising:

a hammer head having a first side and an opposite second side, and a ferrule engaging edge located on the second side;

a tip having a distal end and a proximal end, the tip having a hammer head opening for receiving the hammer head, the hammer head opening extending from the distal end of the tip to the proximal end of the tip, the tip further having a ferrule accepting opening near the distal end of the tip, and a generally stationary cutting edge within the hammer head opening, the cutting edge located proximally of the ferrule accepting opening.

2. (original) The crimping and cutting device of claim 1 wherein the hammer head further comprises a first camming surface located on the first side of the hammer head and the tip comprises a second camming surface near the distal end of the tip and opposite the ferrule accepting opening.

3. (original) The crimping and cutting device of claim 2 wherein movement of the hammer head in a proximal direction directs the hammer head towards the ferrule accepting opening.

4. (original) The crimping and cutting device of claim 2 wherein the second camming surface forms a wall of the hammer head opening and flares outwardly towards the distal end of the tip.

5. (original) The crimping and cutting device of claim 2 wherein the first camming surface and the second camming surface abut flushly when the hammer head is at the distal end of the tip.

6. (original) The crimping and cutting device of claim 2 wherein the first camming surface does not abut the second camming surface when the hammer head is pulled proximally of the ferrule accepting opening.

7. (original) The crimping and cutting device of claim 1 wherein the tip further comprises an aperture between the distal end and the proximal end of the tip, the cutting edge located distally of the aperture.

8. (original) The crimping and cutting device of claim 1 wherein proximal movement of the hammer head within the tip causes the ferrule engaging edge of the hammer head to contact the cutting edge after the hammer head has past the ferrule accepting opening of the tip.

9. (original) The crimping and cutting device of claim 1 wherein the tip comprises a distal end outer diameter and a proximal end outer diameter, wherein the outer diameter of the distal end is greater than the outer diameter of the proximal end.

10. (original) The crimping and cutting device of claim 1 further comprising a handle assembly having a trigger, wherein activation of the trigger draws the hammer head proximally within the tip.

11. (original) The crimping and cutting device of claim 10 further comprising a safety button, wherein the trigger cannot be activated until the safety button is depressed.

12. (original) The crimping and cutting device of claim 10 further comprising an adjustment screw within the handle assembly, wherein a length of a central rod connecting the hammer head to the handle assembly is adjustable by the adjustment screw.

13. (original) The crimping and cutting device of claim 1 further comprising a tubular portion extending from the proximal end of the tip, the device further comprising a suture loading assembly mounted on the tubular portion and slidable along the tubular portion.

14. (original) The crimping and cutting device of claim 1 wherein the suture loading assembly comprises a loop threadable through the ferrule accepting opening.

15. (withdrawn) A handle assembly for a surgical instrument, the handle assembly comprising:

a trigger member; and,

a safety button, wherein the trigger member is not movable until the safety button is depressed.

16. (withdrawn) The handle assembly of claim 15 further comprising a first side and a second side, the trigger member pivotable within the first side and the second side.

17. (withdrawn) The handle assembly of claim 16 wherein the safety button includes a pin having an engageable end and extending through either side of the handle assembly.

18. (withdrawn) The handle assembly of claim 17 wherein the safety button includes a first pin extending through the first side and a second pin extending through the second side.

19. (withdrawn) The handle assembly of claim 17 further comprising a spring surrounding the pin.

20. (withdrawn) The handle assembly of claim 17 wherein the safety button includes at least two ribs, a gap separating each pair of adjacent ribs.

21. (withdrawn) The handle assembly of claim 20 wherein the safety button includes a first side rib, a second side rib, and a middle rib, a first side gap located between the first side rib and the middle rib, and a second side gap located between the second side rib and the middle rib.

22. (withdrawn) The handle assembly of claim 20 wherein the trigger member includes a safety button engaging member, wherein, if the engageable end of the pin of the safety button is not depressed, then the safety button engaging member of the trigger will abut a rib when an attempt is made to move the trigger, and further wherein, if the engageable end of the pin of the safety button is depressed, then the safety button engaging member of the trigger will slide between a pair of adjacent ribs.

23. (withdrawn) The handle assembly of claim 22 wherein the safety button engaging member is hook shaped.

24. (withdrawn) The handle assembly of claim 18 wherein the safety button includes a first side rib adjacent the first pin, a second side rib adjacent the second pin, and a middle rib, a first side gap located between the first side rib and the middle rib, and a second side gap located between the second side rib and the middle rib.

25. (withdrawn) The handle assembly of claim 24 further comprising a first spring surrounding the first pin and a second spring surrounding the second pin.

26. (withdrawn) The handle assembly of claim 25 wherein the first side and the second side each include an opening for passing the first pin and the second pin, respectively, each opening including a pocket for seating the first spring and the second spring, each pocket having a greater diameter than a diameter of each opening.

27. (withdrawn) The handle assembly of claim 16 wherein the trigger includes a spring receiving member, the handle assembly further comprising a trigger spring connected between the spring receiving member of the trigger and a protrusion within either the first side or the second side.

28. (withdrawn) The handle assembly of claim 16 further comprising an adjustment screw positioned between the first side and the second side, the adjustment screw for adjusting length of a rod extending from a distal end of the handle assembly.

29. (withdrawn) The handle assembly of claim 28 wherein the adjustment screw is only adjustable prior to securing the first side to the second side.

30. (withdrawn) A surgical instrument comprising:

a handle assembly;

a rod member extending from a distal end of the handle assembly; and,

an adjustment screw located within the handle assembly and upon a proximal end of the rod member, wherein length of the rod member outside of the handle assembly can be changed by the adjustment screw.

31. (withdrawn) The surgical instrument of claim 30 wherein a longitudinal axis of the rod member coincides with a longitudinal axis of the adjustment screw.

32. (withdrawn) The surgical instrument of claim 30 wherein the adjustment screw includes a bore through which a proximal end of the rod member is seated.

33. (withdrawn) The surgical instrument of claim 30 wherein the adjustment screw is contained within the handle assembly and not accessible after manufacture of the surgical instrument.

34. (withdrawn) The surgical instrument of claim 30 wherein the adjustment screw includes internal threads which engage with external threads on the rod member.

35. (withdrawn) A suture loading assembly for threading suture material through a surgical instrument, the suture loading assembly comprising:

a body,

an attaching member extending from the body for attaching the body to the surgical instrument; and,

a flexible loop extending from a distal end of the body.

36. (withdrawn) The suture loading assembly of claim 35 wherein the body includes a bore from which the loop extends.

37. (withdrawn) The suture loading assembly of claim 35 wherein the attaching member includes two legs extending from the body, an inner portion of each leg curved to accept a cylindrical member of a surgical instrument, wherein the attaching member is slidable along the cylindrical member of the surgical instrument.

38. (withdrawn) The suture loading assembly of claim 37 wherein an outer portion of each leg includes an indented area for forming a finger grip.

39. (withdrawn) The suture loading assembly of claim 35 further comprising a cap surrounding a portion of the body.

40. (withdrawn) The suture loading assembly of claim 39 wherein the cap includes finger grips.

41. (withdrawn) The suture loading assembly of claim 40 wherein the finger grips are indents in sides of the cap.

42. (withdrawn) The suture loading assembly of claim 39 wherein the cap includes openings for receiving the body and the attaching member.

43. (withdrawn) The suture loading assembly of claim 35 wherein the loop is made from wire.

44. (withdrawn) The suture loading assembly of claim 43 further comprising a plug inserted within a proximal end of the body for retaining the wire within the body.

45. (withdrawn) In combination, a suture securing instrument and a suture loading assembly,

the suture securing instrument comprising:

an elongated tubular portion having a distal end and a proximal end, the distal end including a ferrule accepting opening, the proximal end attached to a handle assembly;

the suture loading assembly comprising:

a body,

an attaching member extending from the body for attaching the body to the elongated tubular portion of the suture securing instrument; and,

a flexible loop extending from a distal end of the body.

46. (withdrawn) The combination of claim 45 wherein the loop is threaded through the ferrule accepting opening.

47. (withdrawn) The combination of claim 45 wherein the attaching member is slidable along the tubular portion of the suture securing instrument.

48. (withdrawn) The combination of claim 47 wherein the attaching member includes two legs extending from the body, an inner portion of each leg curved to accept the tubular portion of the suture securing instrument.

49. (withdrawn) The combination of claim 48 wherein an outer portion of each leg includes an indented area for providing a finger grip.

50. (withdrawn) The combination of claim 45 wherein the suture loading assembly further comprises a cap surrounding the body and attaching member, the cap extending past the tubular portion.

51. (withdrawn) The combination of claim 50 wherein the cap includes a pair of indents usable as finger grips.

52. (withdrawn) The combination of claim 45 wherein the suture securing instrument further comprises an aperture in the elongated tubular portion, the aperture located proximally of the ferrule accepting opening, the flexible loop threaded through the aperture prior to threading through the ferrule accepting opening.

53. (withdrawn) The combination of claim 52 further comprising a ferrule positioned in the ferrule accepting opening, the flexible loop threaded through the ferrule.

54. (withdrawn) The combination of claim 45 wherein the loop is made from a preformed wire bent into a diamond shape.

55. (Once amended) A method of securing suture material using a crimping and cutting device, the method comprising:

threading the suture material through a ferrule in the device;

moving a hammer head proximally through a tip of the device to crimp the ferrule;

continuing to move the hammer head proximally after the ferrule has been crimped entrapping the suture material within the ferrule;

abutting the hammer head against a generally stationary cutting edge within the tip, capturing the suture material therebetween; and,

applying pressure with the hammer head against the cutting edge until the suture material is cut.

56. (original) The method of claim 55 wherein moving the hammer head proximally comprises squeezing a trigger on a handle assembly of the crimping and cutting device.

57. (original) The method of claim 56 wherein a safety button is depressed on the handle assembly prior to squeezing the trigger.

58. (original) The method of claim 55 wherein threading the suture material through a ferrule comprises threading the suture material through a flexible loop extending from a distal end of the ferrule and pulling the flexible loop proximally until the suture material is threaded through the ferrule.

59. (original) The method of claim 55 wherein pulling the flexible loop proximally comprises sliding a suture loading assembly, which is mounted on a tubular portion of the cutting and crimping device and to which the flexible loop is attached, proximally along the tubular portion.

60. (withdrawn) A method of threading a suture securing instrument comprising:

mounting a suture loading assembly upon a tubular portion of the suture securing instrument; and,

threading a flexible loop extending from the suture loading assembly through a ferrule within a distal end of the suture loading assembly.

61. (withdrawn) The method of claim 60 further comprising inserting suture material through the flexible loop.

62. (withdrawn) The method of claim 61 further comprising pulling the flexible loop proximally until the suture material is threaded through the ferrule.

63. (withdrawn) The method of claim 62 wherein pulling the flexible loop proximally comprises sliding the suture loading assembly proximally along the tubular portion of the suture securing instrument.

64. (withdrawn) A kit for securing suture material within a body of a patient, the kit comprising:

a cutting and crimping device;

a ferrule loaded into the cutting and crimping device; and,

a suture loading assembly mounted on a tubular portion of the cutting and crimping device, a flexible loop extending from the suture loading assembly threaded through the ferrule.

(9) EVIDENCE APPENDIX

There is no data to include in this appendix.

(10) RELATED PROCEEDINGS APPENDIX

There is no data to include in this appendix.

If there are any charges with respect to the presently submitted response or otherwise, please charge them to deposit account 06-1130, maintained by the Applicant's attorneys.

Respectfully Submitted,

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,899	10/22/2001	Oleg Shikhman	INE-0061	6867

EXAMINER

ART UNIT	PAPER NUMBER

23413 7590 10/31/2005

CANTOR COLBURN, LLP
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BLOOMFIELD, CT 06002

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

1-month Action

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/037,899	Applicant(s) SHIKHMAN ET AL.	
	Examiner Jessica R. Baxter	Art Unit 3733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on *19 August 2005* is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file anamended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☒ Other (including any explanation in support of the above items):

See CFR 41.37 for a complete list of the Appeal Brief Guidelines
http://www.uspto.gov/web/offices/pac/mpep/documents/appxr_41_37.htm#cfr37s41.37.

EDUARDO C. ROBERT
SUPERVISORY EXAMINER

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,899	10/22/2001	Oleg Shikhman	INE-0061	6867

23413 7590 01/24/2006

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EXAMINER	
BAXTER, JESSICA R	

ART UNIT	PAPER NUMBER
3733	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.	Applicant(s)	
10/037,899	SHIKHMAN ET AL.	
Examiner	Art Unit	
Jessica R. Baxter	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on *31 October 2005*.
   (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
   (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
   (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
   (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
   (d) ☒ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
   (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
   (b) ☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
   The issue fee required by 37 CFR 1.18 is $_____. The publication fee, if required by 37 CFR 1.18(d), is $_____.
   (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
   (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
   (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☒ The reason(s) below:

See Continuation Sheet

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: A Notice of Appeal was filed on 17 March 2005. An Appeal Brief was filed 19 August 2005. On 31 October 2005, a Notification of Non-Compliant Appeal Brief was mailed to the applicant. The applicant should have responded to the notice by 01 December 2005 in order to avoid abandonment of the application. The applicant cannot buy any time under Rule 1.136 since that time was already used since the maximum allowed time is 2 months plus 5 months of extension from the filing of the Notice of Appeal, (an expiration date of 17 September 2005). The time period is not reset by a Notice of Non-Compliant Appeal Brief. See MPEP 1205.